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No. 373] NEW DELHI, TUESDAY, JULY 16 1957/ASADHA 25, 1879

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 12th July 1957

S.R.O. 2320.—In pursuance of the provisions of sub-section (1) of Section 86 of the Representation of the People Act, 1951, the Election Commission hereby publishes a copy of the Election Petition No. CS(1) 478 of 1957, presented to the Commission on the 3rd June, 1957, under Section 81 of the said Act, by Shridhar Mahadeo Joshi, resident of 199/4, Tilak Wadi, Sadashiv Peth, Poona No. 2, calling in question the election to the Council of States by the elected members of the Bombay Legislative Assembly of Shri Rajbhoj Pandurang Nathaji, 207, Ghorpade Peth, Poona City.

Received by Registered Post this the Third day of June, One Thousand Nine Hundred and Fifty Seven.

(Sd.) DIN DAYAL, Under Secy.,
Election Commission, India.

The 3rd June 1957.

ELECTION PETITION No. C.S. (1) 478 of 1957

To

THE ELECTION COMMISSIONER, INDIA, NEW DELHI

1. Shridhar Mahadeo Joshi, age about 50, residing at 199/4, Tilak Wadi, Sadashiv Peth, Poona No. 2—*Petitioner.*

Versus

1. Rajbhoj Pandurang Nathaji, 207, Ghorpade Peth, Poona City—*Respondent.*

In the matter of an election petition under Sections 80 and 81 of the Representation of the Peoples' Act, 1951 (Act No. 43 of 1951) calling in question of the election of Respondent herein, the results of which were declared on 22nd April, 1957.

The Humble Petition of the Petitioner abovenamed.
Most respectfully sheweth:—

The Petitioner is a citizen of India and in the General Elections held in March, 1957, the Petitioner was elected from Shukrawar Peth Constituency of the City of Poona as a member of the Bombay Legislative Assembly. Petitioner's election result was declared in the Bombay Government Gazette, Part IV(C), Extraordinary, on the 5th April 1957. The Petitioner was also a member of the old Bombay Legislative Assembly which was dissolved on the 4th April, 1957. The Petitioner is a person who is entitled to vote as a member of the Bombay Legislative Assembly for electing the representatives of the State of Bombay to the Council of States. The Petitioner is, therefore, an electoral for the purposes of the elections of the representatives of the Bombay State to the Council of States.

2. That in the Bombay Government Gazette, Extraordinary, Part IV(C), of 6th April, 1957, Notifications were published by order of the Secretary to the Election Commission, calling upon the elected members of the Legislative Assembly of the State of Bombay to elect, in accordance with the provisions of the Representation of the Peoples' Act, 1951 and of the Rules and Orders made thereunder, persons to fill vacancies caused by the death of Dr. B. R. Ambedkar and by the election of Shri Rajaram Balkrishna Rawoot, Shri Jaisukhlal Hathi and Shri M. M. Shah to the House of the People. The said four persons were the then sitting Members representing Bombay State in the Council of States. The said Notifications published in the Bombay Government Gazette, Extraordinary, Part IV(C) of 6th April, 1957 were numbered as 100/2/31/57 (1), 100/2/30/57 (1), 100/2/29/57 (1) and No. 100/2/28/57 (1) respectively. In the same Bombay Government Gazette, Extraordinary, Part IV(C), dated 6th April, 1957, two other Notifications were published by the Order of the Secretary of the Election Commission in purported exercise of the powers conferred by Section (1) of sub-section 39 of the Representation of the Peoples' Act, 1951, whereby the Election Commissioner purported to appoint, for each of the elections to the Council of States to be held in pursuance of the above stated Notifications, the date indicating the last date for making nominations, the date for scrutiny of the nominations, the last date for the withdrawal of candidatures, the date on which the Poll would, if necessary, be taken and the date before which the elections would be completed. The Petitioner craves leave to refer to and rely upon the said Bombay Government Gazette, Extraordinary, Part IV (C) of 6th April, 1957, if and when produced.

3. That on or before the 16th April, 1957, which was the last date fixed for making nominations, four nominations were received. Shri Rajbhoj Pandurang Nathaji, the Respondent, had made his nomination for the vacancy caused by the death of Dr. B. R. Ambedkar. One Sonusing Dhansing Patil had made his nomination for the vacancy caused by the vacation of the seat by Shri R. B. Rawoot on his election to the House of the People. One Shri Maganlal Bhagwanji Joshi had made his nomination for the vacancy caused by the vacation of the seat by Shri Jaisukhlal Hathi on his election to the House of the People and one Shri Jethalal Harikrishna Joshi had made his nomination to the vacancy caused by the vacation of the seat by Shri M. M. Shah on his election to the House of the People. Since no other nominations were made, the result of the election of the Respondent and the other persons mentioned above was declared on the 22nd April, 1957 and the said result was published in the Bombay Government Gazette on the 5th May, 1957. The Petitioner begs to refer to and to rely on the said Notifications, if and when produced.

4. The Petitioner says that the so-called elections of the Respondent and the declarations thereof on the 22nd April, 1957, by the Authorities, is void, illegal, inoperative and bad in law.

5. The Petitioner, therefore states that the said election is liable to be declared as void, inasmuch as *inter alia* it was not in compliance with the provisions of the Constitution or of the Representation of the Peoples' Act, 1951, or of the Rules or Orders made under the said Act.

6. The Petitioner submits that the election of the Respondent is void *inter alia* for the following among other grounds:—

- (a) That at the time when the election of the Respondent was declared or at the time when the Election Commission called upon the elected members of the Bombay Legislative Assembly to elect the representatives of the Bombay State to the Council of States, there was in law no electoral college in existence.
- (b) Without prejudice to the above contention and even if it be held that there was electoral college in existence, the election of the Respondent is void, because the election of the four vacancies referred to above was held on two different days and on every day, at a different time for each vacancy.
- (c) That the publication of the Notification by the Election Commission calling upon the electors to elect representatives of the Bombay State to the Council of State, was not in accordance with law.

7. The Petitioner says that the old Bombay Legislative Assembly dissolved on the 5th of April, 1957. Members to the new Legislative Assembly were elected in March, 1957 and their names were published in the Bombay Government Gazette, Part IV(C) of the 5th of April, 1957, but first Meeting of the new Legislative Assembly of the Bombay State has not yet been held, with the result, the members who were elected had not made and subscribed before the Governor or some person appointed by him in that behalf an oath or affirmation according to the form set out for the purpose in the 3rd schedule of the Constitution as required by Article 188 of the Constitution. The Petitioner says that every member of the Legislative Assembly of State is required, before taking his seat, to make and subscribe before the Governor or some person appointed by him in that behalf an oath or affirmation according to the form set out for the purpose in the 3rd schedule of the Constitution. The Petitioner further says that if a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of Article 188, he shall be liable in respect of each day on which he so sits or votes, to a penalty of Rs. 500/- to be recovered as debt due to the State. The Petitioner submits that no person who is elected as a member of the Legislative Assembly of a State can sit or vote as a member of the Legislative Assembly or exercise any privilege, right or power by virtue of his being a member of the Legislative Assembly unless he has made and subscribed before the Governor or some person appointed by him in that behalf an oath or affirmation according to the form set out for the purpose in the 3rd schedule of the Constitution, as laid down by Article 188 of the Constitution of India. The Petitioner submits that mere declaration of a person as being elected as a member of the Legislative Assembly of a State does not entitle him in law to act as a member and, at any rate, it does not entitle him to sit in the House or vote as a member of the Legislative Assembly for any purpose whatsoever. The Petitioner, therefore, submits that at the time when the election of the Respondents herein was declared or at the time when nominations for the said vacancies were to be made or further at the time when the election Commission called upon the members of the Legislative Assembly of the Bombay State to elect representatives of the Bombay State to the Council of State, there were no members of the Bombay Legislative Assembly entitled to vote or to sit as members of the Bombay Legislative

Assembly, since the old House had dissolved on the 5th April, 1957 and the members who were elected to the new House were for the reasons here-in-above stated were not entitled to vote or to sit in the House as members of the Bombay Legislative Assembly. There was no electoral college available for the purposes of the election by the Bombay Legislative Assembly of representatives of the Bombay State to the Council of States. The purported election of the Respondent herein was, therefore, held at a time when there was a vacuum in so far as the existence of an electoral college for the said purpose is concerned. The Petitioner, therefore, says that the purported election of the Respondent herein to the vacancies caused as here-in-above stated, is void, bad in law and inoperative.

8. The Petitioner says that under Article 80 of the Constitution of India, Sub-Clause (4), the Representatives of each State in the Council of State shall be elected by the members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of a single transferable vote.

9. The Petitioner submits that in April 1957, when the Election Commission published the Notifications here-in-after referred to in the Bombay Government Gazette, Part IV(C), Extraordinary, of April 6, 1957, calling upon the elected members of the Legislative Assembly of the State of Bombay to elect a person to fill the vacancies caused as here-in-above stated, there were four representatives to be elected from Bombay State to the Council of States inasmuch as four casual vacancies had accumulated, an election was to be held for four vacancies as hereinafter stated, it was incumbent on the election Commission to hold election to the four vacancies on the same day and at the same time in order that the mandatory provisions of Article 80 of the Constitution, *viz.* that the election shall be held in accordance with the system of proportional representation by means of a single transferable vote may be given effect to. The Petitioner submits that by holding the election on two different dates and at different times on the same day, the system of proportional representation by means of a single transferable vote for the election of the four representatives of the State of Bombay to the Council of States, was not given effect to. The Petitioner says that in spite of the fact that the four casual vacancies had accumulated and the provisions of Article 80 could have been given effect to, the elections were held on two different days and at two different times on the same day *malafide* and with the ulterior motive of defeating the right of an elector to elect a representative of the Bombay State, to the Council of States on the basis of proportional representation by means of a single transferable vote. This has caused serious prejudice to many a elector, and to many an intending candidate inasmuch as the minority groups in the Bombay Legislative Assembly belonging to different political parties, such as, the Praja Socialist Party (of which the Petitioner is a leading member), the Communist Party, the Peasants and Workers Party and similar other parties and the Independents elected under the auspices of the Samyukta Maharashtra Samitee and the Maha Gujarat Janata Parishad, could not even think of making nominations, because the possibility of their candidates being elected was nil, as the election was held on the basis of a single majority vote, although the Constitution requires that elections to the Council of State by members of the Legislative Assembly shall be in accordance with the system of proportional representation by means of a single transferable vote. The Petitioner says that for giving effect to the said system of proportional representation by means of a single transferable vote, the election has got to be of at least two candidates at a time. In the present case, it was clearly possible for the election to be held in accordance with the system of proportional representation by means of a single transferable vote, as at the time when the said election of Respondent

was held, there were four vacancies, but the said vacancies were sought to be filled by elections purported to have been held on different days and that too, on the same day at different times. The Petitioner says that the election of the Respondent, therefore, is void, inoperative and bad in law.

10. The Petitioner says that although the first of the said vacancies was caused as early as December 1956, the election for the said vacancy was not held at the time when the legislative Assembly of the Bombay State was in session. In fact, the old Legislative Assembly of the Bombay State had been dissolved on the 4th April 1957 and immediately on dissolution of the Bombay Assembly, a Notification by Election Commission calling upon the electors to elect representatives of the Bombay State to the Council of State was published on the 6th of April 1957 in the Bombay Government Gazette, Extraordinary, Part IV (C). The said election was purported to be held when the elected members of the new Legislative Assembly of the Bombay State had not even made oath or the affirmation before the Governor as required by Article 188 of the Constitution of India. The new Legislative Assembly has not yet held its first Meeting, which is now scheduled to be held on the 17th June 1957. In view of the fact that a penalty is imposed under Article 193 of the Constitution of India, if a person sits or votes as a member of the Legislative Assembly of a State before he has complied with the requirements of Article 188, no elected member could have given and voted and taken upon himself the liability as laid in Article 193, for having voted although he had not complied with the requirements of Article 188. Moreover, it was illegal and in contravention of the mandatory provisions of the Constitution for the Election Commission to have called upon elected members to elect representatives of the Bombay State to the Council of State, although voting, as a member of the Bombay Legislative Assembly was prohibited at the material time and is even made penal by Article 193 of the Constitution. The Petitioner says that the election of Respondent herein was held in April 1956, after the dissolution of the old assembly and before the newly elected members of the Bombay Legislative Assembly could exercise their right of vote. It was so done solely with the *malafide* intention and ulterior motive of depriving the Petitioner and other elected members belonging to the opposition groups of the Bombay Legislative Assembly from electing their own candidates as representatives of the Bombay State to the Council of State. Further with a view to deprive them of the right of the vote in accordance with the system of proportional representation by means of a single transferable vote. This was done to enable the party in power, *viz.* the Congress, to elect its own nominees as representatives of the Bombay State to the Council of State.

11. The Petitioner says that the Notification of the Election Commission calling upon the elected members of the Bombay Legislative Assembly to elect representatives of the Bombay State to the Council of State was published only in the Bombay Government Gazette, Part IV(C), on the 6th April 1957. The enlarged Bombay State comprises of such areas, as Cutch, Sourashtra, Gujarat, Maharashtra, including Marathwada and Vidarbha. In order to enable the electors or the intending candidates to take advantage of the elections by nominating their own candidates, it was just proper that publication of the said Notification should have been by insertion of the said Notification in different language news-papers belonging to these different areas. This was particularly necessary at a time when the Assembly was not in session. The fact that only 4 nominees of the Congress party made their nominations also indicates that many others did not make their nominations because publication of the said Notification calling upon the elected members of the Bombay Legislative Assembly to elect representatives of the Bombay State to the Council of State was not adequately made to give effect to

the requirement of the Constitution and the Representation of the Peoples Act, 1951. The period mentioned in the Gazette of 6th April 1957, *viz.* 6th April 1957 to 16th April 1957, which was the last date for making nominations was also grossly inadequate in view of the distant and scattered areas to which the electors belong. The Petitioner says that nomination of intending candidates had to be made in the City of Bombay and it was obvious that the period of 10 days given by the Notification published in the Bombay Government Gazette of 6th April 1957, was inadequate to enable intending candidates to make their nominations. The Petitioner says that on account of the inadequate publication of the said Notification, the result of the election of the Respondent herein was materially affected.

12. In the premises and the circumstances aforesaid, the Petitioner says that the result of the election of the returned candidate, *viz.* the Respondent herein, has been materially affected by the non-compliance of the provisions of the Constitution of the India and of the representation of the Peoples Act, 1951 and the Rules and Orders made thereunder as here-in-above stated.

13. The Petitioner, therefore, says that it be declared that the election of the Respondent herein to the Council of States as representative of the Bombay Legislative Assembly is void.

14. The Petitioner has deposited Rs. 1,000 in Reserve Bank in favour of the Secretary, Election Commission, as security for the cost of Election-Petition, the receipt whereof is enclosed herewith.

15. In the premises aforesaid, it is prayed that this Petition be referred to the Election Tribunal for Trial and for orders for the following reliefs—

- (A) Declare the Election of the returned candidate, *viz* the Respondent herein to be void;
- (B) That the Respondent be directed to pay to the Petitioner the costs of this petition.
- (C) That such other and further reliefs as the circumstances of the case may require may be granted.

S. M. JOSHI,

Petitioner.

I, Shridhar Mahadeo Joshi, the Petitioner here-in-above, hereby declare that what has been stated in the above Petition in Paras Nos. 1, 6, 7, 9 to 13, 14 and 15, is true to the best of my knowledge and what has been stated in paras Nos. 2 and 3 is to the best of my information, which I believe to be true and the rest are my submissions.

S. M. JOSHI,

Petitioner.

Verified this 1st day of June 1957, at Poona.

Before me.

[No. 32/CS (1)478/57.]

By Order,

K. S. RAJAGOPALAN, Under Secy.